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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/190,788	11/12/1998	CHRISTOPHER N. MACROGLOU	97-019-DIV	7074
29883	7590	10/30/2007		
BARTONY & HARE, LLP 1806 FRICK BUILDING 437 GRANT STREET PITTSBURGH, PA 15219-6101			EXAMINER TRIMIEW, RAEANN	
			ART UNIT 3711	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**MAILED**  
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**GROUP 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/190,788  
Filing Date: November 12, 1998  
Appellant(s): MACROGLOU, CHRISTOPHER N.

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Henry E. Bartony  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/16/07 appealing from the Office action mailed 9/29/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1, 2, 13-20, 27 and 28.

Claims 21-24 and 29-31 are allowed.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner: 35 USC 112, first paragraph over claims 29-31.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,467,992	HARKNESS	11-1995
6,213,887	CARNEY	4-2001

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 13-20, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harkness (5,467,992) in view of Carney (6,213,887). Harkness discloses a device support member worn around a person's head and an attached laser light (abstract) generating a linear alignment beam of light visible to the person to provide an alignment of the person's body when in position to perform the task as stated

in claims 1 and 15 (figs. 2 and 3). Harkness discloses a spot of light on the ground and does not disclose a line of light. However, Carney teaches a golfing practice aid for proper alignment comprising a laser projecting a spot of light or a line of light. Harkness also discloses a cylindrical lens and positions the lens to direct the beam of light as in claim 2 (fig 4 and col 3, lines 20-26). Regarding claims 13 and 16, figures 2 and 3 show a band worn around a person's head. Regarding claims 14, 17 and 18, the beam is visible on the ground (fig 3). Regarding claims 19 and 20, Harkness does not disclose the device around the chest or hips of the user. Harkness does disclose the device as being interchangeable among different items. However, moving the device from one body part to another is a method of use, which is not relevant to the structure of the device. Regarding claims 27 and 28, Harkness discloses the device attached to glasses (col. 2, lines 61-65). One skilled in the art would have modified the invention of Harkness with Carney by changing the spot of light to a line by routine experiment since Carney clearly suggest the use of a spot or line of light is interchangeable.

#### **(10) Response to Argument**

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the suggestion is made clear in the secondary reference, *Carney*. The components of appellant's claimed invention is a device comprising 1) a mechanism with a laser and cylindrical lens adapted to project a generally linear extending projection of light on the surface and 2) a support member suitable to be donned on a person's head wherein the mechanism attached to the support member. As shown in the rejection above, Harkness clearly discloses each and every limitation including the mechanism comprising a laser and cylindrical lens and a support member capable of being worn a person's head wherein the mechanism is attached to a the support member (see figure 2 of Harkness). Harkness discloses the laser projecting a line of light but does not disclose the laser adapted to projecting a linear line of light on the surface. The secondary reference, *Carney*, teaches a golfing device comprising a laser light that projects either a spot of light or a line light (see col. 4, lines 21-29). Throughout the entire disclosure of *Carney* the laser light is taught as a spot of light or a line of light, which clearly provides the suggestion and proves the two are interchangeable.

Appellant further argues the language describing the method of intended use or functional language in the claims is not supported by the prior art. Independent claim 1 of the instant invention recites:

“...the mechanism being attached to the support member in an orientation such that the extending projection of light is generally parallel to an alignment of a plane transversing the person's eyes when the person is in position to perform a task.”.

Independent claim 15 of the instant invention recites:

“...the mechanism being attached to the support member in an orientation such so that the line of light is generally parallel to a line passing transversely through the portion of the person's body to provide to the person an indication of the alignment of the portion of the person's body.”.

Appellant argues the language as listed above is not disclosed or suggested by the prior art. However, the language describing the intended function is satisfied so long as the apparatus in the prior art is capable of performing the function, see MPEP 2114. In the instant case the device is attached in a particular manner to allow the light to project in a specific manner. The primary reference, Harkness, clearly shows the device being adjustable and movable to different locations. Column 2, lines 60-65, discloses the device is capable of being mounted on any article of headwear, including a headband and glasses. This statement supports the device is capable of being moved and therefore attached to any location. Column 4, lines 30-32, recites, “The angle of the light source may thus be easily adjusted so that the light spot is directed ...”. This portion of the disclosure proves the device can be adjusted or angled once it is moved to a particular location. Since Harkness makes clear the device is capable of being moved and adjusted, the orientation and/or movements claimed by appellant is satisfied.

In conclusion, it is submitted that Harkness in view of Carney discloses each and every limitation in the instant invention. The modification of the spot of line to a line of line is within the capabilities of one skilled in the art and is openly suggested by Carney,

Art Unit: 3711

the secondary reference. It is also submitted that the device disclosed by Harkness in view of Carney is capable of performing the functions claimed in the instant application since Harkness fully discloses the device as movable and adjustable

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

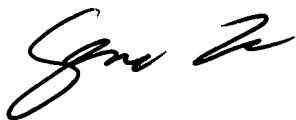
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